

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DELPHI AUTOMOTIVE SYSTEMS, LLC,
a Delaware corporation,

Plaintiff,

v.

ACP of Florida, LLC, d/b/a/ Cooling Parts
South East, a Florida corporation,

Defendant.

Case No. 08-CV-

Hon.

COMPLAINT

Delphi Automotive Systems, LLC sold air conditioner components and radiators to ACP of Florida, LLC, but has not received full payment from ACP of Florida, LLC. This complaint seeks damages for a breach of contract in the amount of \$287,599, plus interest, costs and attorney fees.

COUNT I
BREACH OF CONTRACT

1. Delphi Automotive Systems, LLC ("Delphi") is a limited liability company organized and existing under the laws of Delaware, having its principal place of business in Troy, Michigan.
2. Delphi Corporation is a corporation organized and existing under the laws of the Delaware, having its principal place of business at 5725 Delphi Drive, Troy, Michigan 48098.
3. Delphi Corporation is the sole member of Delphi Automotive Systems, LLC.

4. Delphi is authorized to do business in Michigan. Delphi Product & Service Solutions ("DPSS") is an unincorporated business unit of Delphi.
5. ACP of Florida, LLC, doing business as Cooling Parts South East ("ACP") is a Florida corporation, having its principal place of business at 121-A Morse Boulevard, Winter Park, Florida 32789.
6. The matter in controversy exceeds \$75,000, exclusive of interest and costs, and the action is between citizens of different states. Accordingly, this Court has subject matter jurisdiction of the action. 28 U.S.C. § 1332.
7. This District and Division is an appropriate venue for this action because Delphi resides in this District, and the business at issue was conducted between the Parties in this District. In addition, the Agreement entered into by the Parties provides for jurisdiction and venue in Michigan.
8. In January 2008, ACP agreed to purchase air conditioner components and radiators (the "Parts") from DPSS under Purchase Orders 1-30110, 1-30530, 7-02682, 7-03052, 7-03238, 20-00554, 20-00903, 44-00936 and 44-01730 (copies attached as Exhibit #01) which constitute the agreement of the Parties (the "Agreement").
9. The terms and conditions of the Agreement provide that payment for the Parts were deferred for periods ranging from 90 days to 180 days after delivery.
10. To date, Delphi has not received payment from ACP for the attached invoices.
11. As a result, ACP is currently \$287,599 past due to Delphi.
12. In October 2008, Delphi learned that ACP determined it would cease its business operations in November 2008 and dissolve.
13. ACP did not pay Delphi according to the terms of the Agreement.

14. Delphi is entitled to receipt of the \$287,599 it is owed before dissolution of ACP.

15. A valid and enforceable contract exists between the parties under which Delphi has fully performed, including but not limited to the sale and delivery of the Parts by Delphi to ACP under the Agreement.

16. ACP, while accepting Delphi's performance under the Agreement, had a duty to fully perform under the Agreement but has failed to comply with its terms, including but not limited to its failure and refusal to fully and timely pay Delphi for the goods received by ACP under the Agreement.

17. ACP's failure to fully perform under the Agreement has resulted in a breach of the Agreement causing direct injury and damage to Delphi.

18. ACP's breach of the Agreement has caused Delphi significant economic harm, including but not limited to monetary damages in the amount of \$287,599.


PRAYER FOR RELIEF

WHEREFORE, Delphi respectfully requests that the Court enter judgment in Delphi's favor against ACP as follows:

- A. ACP breached the Agreement;
- B. Delphi be awarded damages of \$287,599 plus any and all applicable pre-judgment and post-judgment interest;
- C. ACP be required to pay Delphi's costs incurred in this action;
- D. ACP be required to pay Delphi's reasonable attorneys' fees and expense incurred in this action; and

E. Delphi be awarded such other and further relief the Court deems just and appropriate.

Respectfully submitted,
Delphi Automotive Systems, LLC

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Dated: October 29, 2008